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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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10 OSCAR WILLIAMS, JR.,
11 Petitioner,
12 vs.
13 SALVADOR GODINEZ, *et al.*,
14 Respondents.

Case No. 3:90-cv-00324-HDM-VPC
ORDER

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16 This closed action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C.
17 § 2254 by a Nevada state prisoner.

18 In 1990, petitioner filed a petition for a writ of habeas corpus in this Court. (ECF No. 13).
19 This Court denied the petition in 1993. (ECF No. 41). Petitioner appealed to the Ninth Circuit
20 Court of Appeals. (ECF No. 44). In 1994, the Ninth Circuit affirmed this Court's denial of the
21 petition. (ECF No. 70).

22 In 2012, petitioner filed a motion for relief from judgment, seeking reconsideration of this
23 Court's 1993 order denying his petition. (ECF No. 73). By order filed April 4, 2012, this Court
24 denied petitioner's motion for relief from judgment. (ECF No. 74).

25 Once again, on August 17, 2015, petitioner filed a motion for relief from judgment. (ECF
26 No. 81). Petitioner claims that the Ninth Circuit's recent decision in *Riley v. McDaniel*, 786 F.3d
27 719 (2015), constitutes an intervening change in controlling law that allows this Court to reconsider
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1 its denial of his 1990 petition. The issue in *Riley* involves a jury instruction used in Nevada murder
 2 trials. Petitioner's motion for relief from judgment is based entirely on the *Riley* decision.

3 Respondents have filed a motion for a stay of proceedings in this action (ECF No. 87),
 4 pending final resolution of the petition for writ of certiorari filed in *Riley v. McDaniel*, 786 F.3d 719
 5 (9th Cir. 2015), at United States Supreme Court docket number 15-630. (ECF No. 91, at Exhibit 2).
 6 The Ninth Circuit has issued an order staying the issuance of mandate in *Riley* pending final
 7 disposition in the United States Supreme Court. (ECF No. 91, at Exhibit 3).

8 The power to stay proceedings "is incidental to the power inherent in every court to control
 9 disposition of the causes on its docket with economy of time and effort for itself, for counsel, and
 10 for litigants." *Landis v. North American Co.*, 299 U.S. 248, 254 (1937). A stay may be appropriate
 11 to avoid duplicative litigation and inconsistent results, even when the stay requires one litigant to
 12 stand aside while a litigant in another case settles the rule of law that will define the rights of both.
 13 *Id.* at 255; see also *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863-64 (9th Cir.
 14 1979). "This rule applies whether the separate proceedings are judicial, administrative, or arbitral in
 15 character, and does not require that the issues in such proceedings are necessarily controlling of the
 16 action before the court." *Id.*; *Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180 (1952).

17 In this case, petitioner seeks reconsideration of this Court's denial of his 1990 amended
 18 petition for a writ of habeas corpus. (ECF No. 81). In his most recent motion for relief from
 19 judgment, petitioner claims that the Ninth Circuit's recent decision in *Riley v. McDaniel*, 786 F.3d
 20 719 (2015), constitutes an intervening change in controlling law that allows this Court to reconsider
 21 its denial of his 1990 petition. An opinion of the Ninth Circuit is not final, and thus is not the "law
 22 of the case" until mandate issues. *Carver v. Lehman*, 558 F.3d 869, 878 (9th Cir. 2009). Any
 23 reliance on an opinion not supported by issuance of a mandate "is a gamble." *Natural Resources
 24 Defense Council, Inc. v. County of Los Angeles*, 725 F.3d 1194, 1203 (9th Cir. 2013). The issue in
 25 *Riley* involves a jury instruction used in Nevada murder trials. Petitioner's motion for relief from
 26 judgment is based entirely on the *Riley* decision. If the United States Supreme Court grants the
 27 petition for writ of certiorari and respondents prevail in *Riley*, it could render petitioner's motion
 28 moot. If petitioner ultimately succeeds on his motion for relief from judgment, based on *Riley*, it

1 would require re-opening a Nevada state court murder conviction from 1985. In the interests of
2 justice, judicial economy, and avoiding duplicative litigation, a stay is appropriate pending the
3 outcome of the United States Supreme Court's final resolution of *Riley v. McDaniel*.

4 **IT IS THEREFORE ORDERED** that respondents' motion for a stay of proceedings (ECF
5 No. 87) is **GRANTED**. The proceedings in this action are **STAYED** pending final resolution of
6 *Riley v. McDaniel*, 786 F.3d 719 (2015); United States Supreme Court Docket No. 15-630. Within
7 **twenty (20) days** of the United States Supreme Court's final resolution of *Riley v. McDaniel*,
8 respondents shall inform this Court.

9 **IT IS FURTHER ORDERED** that petitioner's motion for relief from judgment (ECF No.
10 81) is **DENIED WITHOUT PREJUDICE** to renewing the motion following the final resolution of
11 *Riley v. McDaniel*.

12 Dated this 25th day of February, 2016.

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15 HOWARD D. MCKIBBEN
16 UNITED STATES DISTRICT JUDGE
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